Supreme Court, U. S.
FILED
SEP 7 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

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E. C. CHAPPELLE, JR.,
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THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
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On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

This is an appeal from the final judgment of the First Circuit Court of Appeal for the State of Louisiana, rendered on March 1, 1976, affirming a trial court judgment sustaining against Federal Constitutional challenge on equal protection grounds, the requirement of ownership of "assessed property" as a requisite to holding an appointive municipal position. The Supreme Court of Louisiana denied writs of Certiorari and Review on June 9, 1976, despite this constitutional attack.

THE OPINIONS BELOW

The Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana rendered a written opinion which is not reported, but is printed as Appendix C to this statement (pp. 26-33 infra). The First Circuit Court of Appeal, State of Louisiana rendered its opinion (Appendix D, pp. 35-43 infra.) reported at 329 So.2d 810. The denial of the writs of Certiorari and Review and other remedial writs by the Supreme Court of Louisiana is reported in the memorandum decision at 332 So.2d 821. No other written opinions have been delivered.

JURISDICTION

This case began when the appellant was removed from his appointed position as a Commissioner of the municipal body known as The Greater Baton Rouge Airport Commission for the reason that appellant was not qualified to serve as a member of this Airport Commission, since at the time of his appointment, he owned no property "assessed" in the Parish of East Baton Rouge, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Council Resolution Number 8645, adopted on January 14, 1970, although he owned considerable amounts of personal or movable property. This appellant sought injunctive relief and a declaratory judgment at the trial court to the effect that Louisiana Act 151 of 1969 was violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Despite the irrational requirements of ownership of "assessed property" as a requisite to qualification as a member of this appointive municipal body, asserted throughout this suit by means of challenge on Con-

stitutional grounds, the trial court upheld the constitutionality of Louisiana Act 151 of 1969. This appellant took timely appeal to the First Circuit Court of Appeal for the State of Louisiana where again the constitutionality of Louisiana Act 151 of 1969 was affirmed. As a requirement for seeking discretionary review to the Supreme Court of Louisiana, this appellant timely requested a rehearing from the First Circuit Court of Appeal, State of Louisiana, which request was refused. Upon the refusal of the rehearing on April 12, 1976, the appellant sought all remedial writs from the Supreme Court of Louisiana, including writs of Certiorari and Review, again urging the unconstitutionality of Louisiana Act 151 of 1969. On June 9, 1976, the Supreme Court of Louisiana, the highest court of the State of Louisiana, refused to consider appellant's constitutional challenge upon Louisiana Act 151 of 1969.

This appellant has continuously urged the infirmity of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution throughout the entire state court proceedings. This appellant has timely sought judicial review of the constitutionality of Louisiana Act 151 of 1969 through the Supreme Court of Louisiana, the highest court of that state. Despite the question of the validity and constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, the highest court of Louisiana, the Supreme Court of Louisiana, has upheld the validity of Louisiana Act 151 of 1969.

Notice of appeal to the Supreme Court of the United States was timely filed by the appellant in the 19th Judicial District Court of the Parish of East Baton Rouge, State of

Louisiana, the court now possessed of the record in this matter on the 13th day of August, 1976.

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2); Federal Code Annotated, Title 28, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Louisiana court, on direct appeal in this:

Huffman v. Pursue, Ltd. (1975)
95 S.Ct. 1200, Rehearing denied 95 S.Ct. 1969

Cox Broadcasting Corp. v. Cohn, (1975)
95 S.Ct. 1029

Hall v. Beals, (1969)
90 S.Ct. 200

STATUTES INVOLVED

Act 151 of 1969, located in the Louisiana Acts of 1969 at page 383, states in Section 3 thereof, the portion of that Act pertinent to this case:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors

> in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

East Baton Rouge Council Resolution Number 8645, located in Title 15, Chapter 1, Section 2 of the Code of Ordinances, Parish of East Baton Rouge, Louisiana at page 231, implementing Louisiana Act 151 of 1969 states in pertinent part:

"SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14 (d. 2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Government shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.'"

QUESTIONS PRESENTED BY THE APPEAL

The following questions are the only questions presented by this appeal:

1. Does the United States Supreme Court decision styled *Turner v. Fouche* 396 U.S. 346, 90 S.Ct. 532(1970) mandate that Louisiana Act 151 of 1969 be struck down as being violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

2. Whether Louisiana Act 151 of 1969 which sets forth a classification of "assessed property" owners and non-owners of "assessed property," a classification not yet examined by this court, is violative of appellant's equal protection and due process rights as provided in the Fourteenth Amendment to the United States Constitution. Incidental thereto is the question whether the criterion of "assessment" as set forth in Louisiana Act 151 of 1969 is somehow rationally related to the legislative objective sought in enacting that legislation—that is, does ownership of "assessed property" make one more qualified to serve on the Airport Commission than someone who is not the owner of "assessed property," but yet may have substantial connections with the community, may own substantial amounts of non-assessed property, or may have great expertise in the field of aviation.

3. Whether the right to hold an appointed office is a "fundamental right" within the "compelling state interest test" of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

This appellant, E. C. Chappelle, Jr. for a period of five years, occupied the position of executive director and secretary of The Greater Baton Rouge Airport District. On May 13, 1974, appellant resigned from this salaried position and was appointed as a commissioner on The Greater Baton Rouge Airport Commission. Subsequently, prior to the termination of the appointed term, the East Baton Rouge Parish Clerk, based upon a legal opinion rendered by The East Baton Rouge Parish Attorney, declared the appellant's position on The Greater Baton Rouge Airport Commission vacant as it was the opinion of The Baton Rouge Parish Attorney that appellant was not qualified to serve as a member of the Airport Commission since at the time of his appointment, appellant owned no property "assessed" in East Baton Rouge Parish, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Parish Council Resolution Number 8645, adopted on January 14, 1970. As a result of this legal opinion rendered by The East Baton Rouge Parish Attorney and the declaration of vacancy made by the East Baton Rouge Parish Clerk, appellant on March 4, 1975, at The Greater Baton Rouge Airport Commission meeting was formally denied his position as a member of the Airport Commission and removed therefrom.

On February 26, 1975, appellant initially filed a petition in the 19th Judicial District Court in the Parish of East Baton Rouge, State of Louisiana, for injunctive relief seeking to enjoin the municipal authorities from removing the appellant from his position on the Airport Commission alleging that appellant had met all the qualifications of Louisiana Act 151 of 1969 and alternatively that Louisiana Act 151 of 1969 was

violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Appellants injunctive relief was denied and on March 4, 1975, appellant was removed from his position of the Airport Commission. On March 5, 1975, the appellant sought in the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, a declaratory judgment requesting that appellant be deemed to have met the qualifications imposed by Louisiana Act 151 of 1969 and in the alternative requested that Louisiana Act 151 of 1969 be held infirm as violating the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On July 23, 1975, the trial judge held (Appendix C infra, pp. 26-33) that appellant had not met the qualification imposed by Louisiana Act 151 of 1969 and that Louisiana Act 151 of 1969 was constitutional. The trial judge stated that the right to an appointed office, not being a fundamental right, must be tested by the traditional test of equal protection. The trial judge felt that there was a rational basis for the requirement of ownership of "assessed property" as opposed to "non-assessed property," imposed by Louisiana Act 151 of 1969.

To the trial judge's ruling, the appellant timely appealed on July 28, 1975, to the First Circuit Court of Appeal for the State of Louisiana, the next step in Louisiana's appellant process. Again in this appellate court, the appellant urged the unconstitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The First Circuit Court of Appeal for the State of Louisiana likewise utilized the traditional test of equal protection and found that there was a rational basis for the classification imposed by the Louisiana Legislature in enacting Louisiana Act 151 of

1969. This appellant, who has expertise in the field of aviation, and who owns substantial amounts of personal or movable property, yet owned no "assessed property," failed to see how "assessed property" owners were somehow more qualified than non-owners of "assessed property." He, therefore, sought to have the judgment of the First Circuit Court of Appeal of the State of Louisiana reviewed. After first timely requesting a rehearing from the First Circuit Court of Appeal, which was refused on April 12, 1976, appellant sought a review from the Supreme Court of Louisiana.

Since appellant had no right to direct appeal to the Supreme Court of Louisiana, as direct appeal is only allowed in Louisiana when a state statute is struck down under a constitutional challenge, appellant sought discretionary remedial writs of the Supreme Court of Louisiana. On May 12, 1976, appellant timely filed in the Supreme Court of Louisiana an application for writs of Certiorari and Review to review the judgment below and specifically ask the Supreme Court of Louisiana to review the constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On June 9, 1976, the Supreme Court of Louisiana denied appellant's application for a writ of Certiorari or a writ of Review. The memorandum decision recorded at 332 So.2d 821 stated: "Writ denied; no merit in the assignment of errors." Two of the justices of the Supreme Court of Louisiana felt that the writs should be granted. One of the justices particularly felt that the "writs should be granted. *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970) mandates relief for appellant." The Supreme Court of Louisiana is the highest court in the State of Louisiana.

SUBSTANTIALITY OF THE FEDERAL QUESTION

1. The underlying question presented to this court is an issue that has never been considered squarely by this court, yet the issue arises from a requirement that has on numerous occasions been struck down by this court—the requirement of ownership of property as a requisite to the exercise of some right or as a requisite to the fulfillment of a qualification for a position.

The question before this court, whether the ownership of "assessed property" as a requisite to an appointed position is a novel question and is of particular constitutional importance in order to safeguard the protections granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution as interpreted by a long line of decisions of the Supreme Court of the United States. If ownership of "assessed property" was allowed to stand as a constitutional element of classification, the door would be opened to undermine the protection afforded to all individuals, regardless of property ownership, by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. This honorable court is therefore presented with a substantial and important federal question that should be heard in order to thwart possible future attempts to circumvent the decisions of this court recognizing and defining the protection granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

In *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970), the United States Supreme Court struck down a statutory

scheme whereby only "freeholders" or immovable property or real property owners, could qualify for an appointed position as a member of a Georgia County Board of Education. The members of the County Board of Education were appointed by the County Grand Jury. In order to be eligible for such appointment, the person seeking appointment had to own immovable or real property within the county.

The Supreme Court, per Justice Stewart, struck the Georgia statute down on its face as being violative of the Equal Protection Clause of the Fourteenth Amendment. The court stated:

> ". . . the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that extends to others on the basis of distinctions that violate federal constitutional guarantees." Citing *Carrington v. Rash*, 380 U.S. 89, 91, 85 S.Ct. 775, 776, 13 L.Ed. 2d, 675; *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, 50, 51, 79 S.Ct. 985, 989, 3 L.Ed. 2d, 1070; *Pope v. Williams*, 193 U.S. 621, 632, 24 S.Ct. 573, 575, 48 L.Ed. 817.

The court found it unnecessary to resort to the stricter equal protection test—"compelling state interest." The requirement the court held, whereby the right to hold this appointed public office is tied to the ownership of the immovable or real property:

> ". . . must fall even when measured by the traditional test for a denial of equal protection: whether the challenge classification rests on grounds wholly irrelevant to the achievement of a valid state objective."

Although the Supreme Court of the United States did not consider whether the ownership of "assessed property" was violative of the Equal Protection Clause of the Fourteenth Amendment in *Turner v. Fouche*, supra, the reasoning is equally applicable to a statutory scheme, as the one present before us, whereby only "freeholders" of "assessed property" could qualify for an appointed position. It is notable that in Louisiana real property is usually the only property appearing on the assessment rolls, although Louisiana Revised Statutes 47:1956-1957 do allow personal or movable property to appear on the assessment rolls if any individual desires to follow the detailed procedure. Such procedure is, however, practically speaking, seldom utilized.

Under the statutory scheme imposed by Act 151 of 1969, there is the possibility of someone owning a great amount of personal property or real property, yet owning no "assessed property." This person may have a great connection with the community despite the fact that none of his movable property is assessed. This particular appellant although owning no "assessed property," owned substantial amounts of "non-assessed" personal property and was an expert in the field of aviation.

Therefore, this honorable court should grant this appeal to determine whether the "assessed property" ownership—"non-assessed property" ownership classification is violative of the mandate of *Turner v. Fouche*, supra. Further, the appeal should be granted to see if the requirement of ownership of "assessed property" of Louisiana Act 151 of 1969 is somehow rationally related to the legislative objective in enacting that legislation. It is submitted that such classification of ownership of "assessed property" is invidious discrimination and

violative of the Equal Protection Clause of the Fourteenth Amendment as the ownership of "assessed property" in no rational way indicates a better qualified appointee to the Commission of The Baton Rouge Airport District.

2. Notwithstanding the decision of *Turner v. Fouche*, supra, it must be determined whether the provisions of Louisiana Act 151 of 1969, requiring ownership of property appearing on the assessment rolls as a qualification to membership on The Greater Baton Rouge Airport Commission are constitutional in light of the Equal Protection Clause of the Fourteenth Amendment.

This appellant submits that the right to hold this public office, even though an appointed office, is a fundamental right and must not be denied by the arbitrary classification between owners of property and non-owners of such property:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermine the legitimacy of representative government." *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583.

This right to the public office of Commissioner, being a fundamental right, must be tested by the stricter test of the Equal Protection Clause, that is, the state must demonstrate a "compelling state interest" for requiring such a classification. As is readily apparent, there cannot be shown any "compelling state interest" for such arbitrary classification.

It is clear to this appellant that resort to the stricter test of the Equal Protection Clause is not really necessary for even under the traditional test of equal protection, that is, a

rational basis for such a classification, this statute is also constitutionally infirm.

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 2d, 24 (1968).

> "Although at times variously phrased, the traditional test of a statute validity under the Equal Protection Clause is a familiar one: A legislative classification is invalid only 'if it rest(s) on ground wholly irrelevant to achievement of the regulation objective.'" *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583, citing *Kotch v. Board of River Port Pilot Commission*, 330 U.S. 552, 556, 67 S.Ct. 910, 912, 91 L.Ed. 1093.

See also *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101, 6 L.Ed. 2d, 393 where it was stated:

> "The constitutional safeguard is offended only if a classification rests on grounds wholly irrelevant to the State's objective."

The United States Supreme Court has been very reluctant to uphold the rationality and thus the validity of classification between property owners and non-owners of property in light of an equal protection challenge. In four recent cases, the United States Supreme Court has struck down classifications that distinguish between property owners and non-owners of property, as denying the equal protection of the laws as guaranteed by the Fourteenth Amendment of the United

States Constitution. *Kramer v. Union Free School District*, supra, *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, (1969), *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 S.Ct. 1990, (1970), *Turner v. Fouche*, supra.

Although three of these cases involved the denial of the franchise to otherwise qualified electors, simply because such electors did not own real property, all of these decisions indicate that the highest court of our country does not favor classification which denies certain rights and privileges to persons because such persons lack ownership of property.

In *City of Phoenix, Arizona v. Kolodziejski*, supra, there was involved a challenge to the Arizona Constitution and statutes that exclude non-property owners from voting in elections to improve issuance of general obligation bonds. The United States Supreme Court seemed to indicate that there was an apparent rationally related basis for restricting the vote to real property owners, but yet still struck down such a classification as a denial of equal protection of the laws.

In language equally applicable here, the United States Supreme Court stated:

> "We thus conclude that, although owners of real property have interest somewhat different from the interest of non-property owners in the issuance of general obligation bonds, there is no basis for concluding that non-property owners are substantially less interested in the issuance of these securities than are property owners."

Therefore, the United States Supreme Court, though indicating that there was some reasonably rational basis for such classification, nevertheless struck down this classification as a denial of equal protection. Here, there is present

more compelling reasons to strike down the classification imposed by the Louisiana Legislature in Louisiana Act 151 of 1969, as there is lacking in this act any rationally related basis for such classification to meet the desired state interest to have qualified members serve on The Greater Baton Rouge Airport Commission. Ownership of property, much less ownership of property appearing on the assessment rolls of the Parish of East Baton Rouge, is in no way related to the qualifications necessary to perform the job imposed upon a member of The Greater Baton Rouge Airport Commission.

In addition, Louisiana Act 151 of 1969 is a flagrant violation of the Due Process Clause of the United States Constitution. When a state exercises its power in the adoption of any law, there is the requirement that in the exercise of its power, a state must adopt a measure that is rational and reasonable in light of the power which that state has a right to exercise. That is, the state, in adopting the requirement of ownership of "assessed property" in order to qualify to the Airport Commission, must demonstrate a rational connection between such requirement and its right to establish an Airport Commission, in order to satisfy the Due Process Clause of the United States Constitution. Here, there is a lack of any rational foundation for the requirement of the ownership of "assessed property" in order to qualify for membership on the Airport Commission. The fact that a person owns "assessed property" in the parish is no way indicative of the manner in which he will conduct anticipated goals of the state —to establish an airport that will meet the needs of the area and community. In the words of Justice Stewart in *Turner v. Fouche*, supra, "It seems impossible to discern any interest the qualification can serve." Thus Louisiana Act 151 of 1969 is not only a violation of the Equal Protection Clause, but

likewise is a violation of the Due Process Clause of the United States Constitution.

3. Although this honorable court has never passed upon the issue of whether the right to hold public office is a fundamental right within the "compelling state interest" test of the Equal Protection Clauses, that issue is herein presented. The holding of a public office, whether elected or appointed, is the cornerstone of our democratic type of government. There can be no more fundamental right than the right that is fundamental to the continuation of our form of government —the right of all persons, regardless of property ownership, to seek and attain any public office in our governmental structure.

CONCLUSION

This honorable court should grant this appeal not only to give the appellant the protection against an irrational classification, but to perpetuate and extend the interpretation given to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and not allow the "assessed property" criterion to cut off fundamental rights or to circumvent the United States Supreme Court's holding of invidious discrimination when ownership of real property is involved. The questions presented by this appeal are substantial and of public importance. The case is one of first impression. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted

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PROOF OF SERVICE

I, Herschel C. Adcock, one of the Attorneys for E. C. Chappelle, Jr., Appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ..... day of September, 1976, I served a copy of the foregoing jurisdictional statement, and its appendices, on The Greater Baton Rouge Airport District, et al, Appellees, in connection with this appeal, by delivering the same to their counsel of records, Mr. Edward V. Fetzer, Assistant Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK,
Attorney for the Appellant

APPENDIX A

E C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL,

Appellees.

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
NUMBER 179,759 "J"

FIRST CIRCUIT COURT OF APPEAL
NUMBER 10,621

SUPREME COURT OF LOUISIANA
NUMBER 58,025

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. C. Chappelle, Jr., the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the First Circuit Court of Appeal for the State of Louisiana, rendered on March 1, 1976, affirming the judgment of the Nineteenth Judicial District Court for the Parish of East Baton Rouge,

State of Louisiana. The Supreme Court of Louisiana denied writs of Certiorari and Review in this matter on June 9, 1976.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

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APPENDIX B

STATUTES INVOLVED

1. Louisiana Act 151 of 1969 at Section 3, the pertinent portion thereof states:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

Section 5 of that act contains no limitations that are pertinent to the matter before this Court.

2. East Baton Rouge Parish Council Resolution Number 8645 at Section 2, the pertinent portion thereof states:

> "SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14(d.2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and

> herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Government shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.' "

3. Louisiana Revised Statutes 47:1956-1957 states:

> **"§1956. Preparation, distribution, and return of blank forms for listing and assessing of property**
>
> "The tax commission may require the assessors to make up assessment lists in a formal manner and according to a method to be prescribed by it. In such assessment lists it may require the separate valuations of improved and unimproved property and the improvements thereon. The tax commission shall, before the first day of January of each year, prepare and have printed the blank forms prescribed for the listing and assessing of property, the parish of Orleans excepted. The tax commission shall furnish to each assessor throughout the state such quantity of such printed forms as will suffice to secure the listing of all property subject to taxation. In the parish of Orleans, the tax commission shall furnish such forms as may be requested by the board of assessors and approved by the tax commission.
>
> "Each taxpayer, the parish of Orleans excepted, shall fill out a list of his property and make oath to its correctness, in the manner and form prescribed by law and return such list to the assessor on or before the first day of April of each year. In the parish of Orleans, each taxpayer shall return a list of his property, duly sworn to, within twenty days after the form for such purpose shall have been left at his domicile or place of business. Each tax assessor, in person or by a duly qualified deputy, is authorized to administer oaths or affirmations in the manner required by law for administering oaths. Any wilful mis-statement to the assessor, or any authorized deputy, made under oath, shall be considered and punished as false swearing, as provided by the laws of this state in other cases. As amended Acts 1952, No. 71, § 1.

"§1957. **Listing and assessing of property generally**

"All taxable property in the state shall be assessed by the tax commission. The assessors shall be responsible, under the supervision of the tax commission, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by the tax commission.

"All property subject to taxation shall be listed and assessed at actual cash value and the actual cash value of all property fixed by the tax commission shall be the actual cash value for all purposes.

"The assessor, in person or by deputy, shall have the right and power to require of any property holder an inspection of his books and accounts, and shall have the right to examine them in full, and may, from such books and accounts, make an estimate of the value of the property to be assessed. In order to have accessible information regarding the business of nonresidents, all books and papers pertaining to the business transacted in Louisiana shall be kept within the state. The assessor shall also, if necessary, put upon oath the owner, agent, or employees of the owner, and propound to him or them such questions as will elicit from him or them the actual cash value of the property. The assessor may inquire into the insured value of all property, or into the value at which it had been insured previously, and consider the insured value in listing the property for taxation. The tax assessor shall value each item of property as he considers just, whenever he does not agree with the valuation as fixed by the taxpayer.

"If any person fails or refuses to submit a list of his property and make oath to its correctness, the assessor shall himself make out a list from the best information he can obtain and shall make his own valuations thereon. To that end, he is authorized to administer oaths and propound questions to any person whom he supposes can give information in relation thereto. Any wilful misstatement to the assessor, or any authorized deputy, made under oath, shall be considered and punished as false swearing as provided by the laws of this state in other cases.

"If the assessors, except in the parish of Orleans, find or have reason to believe that the list of taxable property furnished by any person is incomplete or incorrect, they shall add thereto a supplemental list containing a description and valuation of all the property which has been omitted or incorrectly described by the person signing the list; provided, no change in any list of property rendered shall be made until the taxpayers be notified to appear within ten days and show cause why such change should not be made.

"The assessors throughout the state shall ascertain in so far as practicable whether the persons whose property is assessed by them and whose names figure on their assessment rolls are white or colored, and note such fact in their return, and make mention thereof after each name figuring on the assessment rolls.

"If any tax assessor intentionally or knowingly or through gross negligence omits any taxable property from the assessment list, or permits it to be omitted therefrom, he and his sureties in solido shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per centum (10%) per annum interest thereon from the due date of the taxes, ten per centum (10%) attorneys' fees on the amount of the judgment recovered against him, and all costs of the suit.

"The tax commission shall publicly reprimand any assessor if it shall appear that he is wilfully negligent or unfair in the assessment of property, or in omitting it from the rolls, and if the tax commission deem it necessary, shall institute removal proceedings through the Attorney General, for gross misconduct in office.

"If any tax assessor or deputy signs a jurat without having actually administered the oath, he shall be guilty of nonfeasance and malfeasance in office, and the tax assessor shall be liable on his bond for all the taxes due by person purporting to have taken the oath or affirmation, and shall forfeit all his commissions and shall be at once removed from office by the governor."

APPENDIX C

Judgment and Written Reasons for Judgment of the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana

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SUIT NO. 179,759, DIVISION J
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

WRITTEN REASONS FOR JUDGMENT

Plaintiff has filed this suit seeking an injunction prohibiting defendants from removing him from his position as a member of the Greater Baton Rouge Airport Commission. Plaintiff's request for a preliminary injunction was denied and plaintiff was thereafter removed from this position. Plaintiff has amended his petition and now seeks a declaratory judgment concerning his qualifications to hold the position on the Airport Commission and alternatively seeking to be reinstated into his position as Executive Director and Secretary of the Greater Baton Rouge Airport Commission.

The facts are essentially as follows: Plaintiff for a period of five years occupied his position of Executive Director and Secretary of the Greater Baton Rouge Airport Commission. On May 13, 1974, plaintiff resigned this position and was appointed to a position on the Greater Baton Rouge Airport Commission. Plaintiff's position on the Airport Commission has been declared vacant by the Parish Clerk, Rosemary Broussard, based on a legal opinion rendered by Parish Attorney, Joseph F. Keogh, stating that plaintiff is not qualified to serve as a member of the Commission, because at the time of his appointment, plaintiff owned no property assessed in East Baton Rouge Parish. Pursuant to this legal opinion and declaration by Mrs. Broussard, plaintiff on March 4, 1975, at the Commission meeting was denied his position as a member of the Airport Commission.

Basically plaintiff contends that he meets the qualifications for the position on the Airport Commission; that if he does not meet the qualifications, then the property requirements deny him equal protection and due process of law and, thus, are unconstitutional as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and alternatively that he is entitled to be reinstated to his former position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Act 151 of 1969 requires the ownership of "property assessed in East Baton Rouge Parish" in order for the person to serve on the Airport Commission.

The foremost question presented is: What does the word "property" mean in Act 151 of 1969 after considering its "most usual signification"? Our Legislature, in enacting that act, placed no limitation or meaning on the word "property" nor did it set forth any guidelines so as to determine the meaning of that word. Therefore, outside sources must be

consulted, in light of the legislative intent, to decide the meaning of that word.

73 Corpus Juris Secundum, Property, Section 1, Page 137, sets forth the meaning of the term "property" when used generally in a statute:

> "• • • Generally, as used in statutes, the term 'property' should be given its ordinary meaning • • •.
>
> "The word 'property' includes both real and personal property, and ordinarily will be construed as meaning both real and personal property, • • •."

The Louisiana Legislature in enacting the Louisiana Code of Civil Procedure Article 5251 (13) has given effect to the abovementioned broad interpretation of the mere word "property." This article states that:

> "(13) 'Property' includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

Likewise, in support of this unrestricted interpretation, the Louisiana Supreme Court in interpreting a taxing statute said in *Kansas City Life Insurance Company v. Hammett*, 177 La. 930, 149 So. 525, 526 (1933):

> "The term 'property' is sufficiently comprehensive to include every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practical to place a money value."

The Louisiana Supreme Court then continued:

> "The word 'property' as that term is used in the statutes relating to assessment and taxation, refers to every species of valuable right or interest which is subject to ownership, or that which has an exchangeable value or which goes to make up one's wealth or estate;

> all things which have a pecuniary value. 'Property' says Webster, 'in a broad sense, is any valuable right or interest considered primarily as a source or element of wealth.' "

Since the word "property" is not qualified as to whether it must be real or movable property, the Court is of the opinion that "property" as used in the statute includes both real and movable property, with the only qualification being that the property (real or movable) must be "assessed in East Baton Rouge Parish."

It is the Court's opinion that plaintiff has failed to prove that at the time of his appointment, he owned any property assessed in the Parish. The introduction into evidence of a pink slip showing that sales tax had been paid by Mr. Chappelle on a Porsche automobile does not satisfy the requirement of assessment as set out in the act. It is interesting to the Court that Mr. Chappelle was given an opportunity to present any evidence of the ownership of "assessed property" owned on May 8, 1974. This was done by Mrs. Rosemary Broussard, Parish Clerk, in her letter of February 20, 1975, to plaintiff (P-7).

The Court is now faced with the question of whether the subsequent purchase of real property assessed in the Parish (prior to the time of his removal) cured the infirmity that previously existed with respect to his qualifications to hold the office. The Court believes not. The qualifications for the office are determined at the time of the appointment, May 8, 1974, not February 7, 1975, the date of the purchase of real property in the Parish of East Baton Rouge.

We come now to the question of whether or not the requirement that plaintiff own property assessed in the Parish (either real or movable) is constitutional.

Plaintiff contends basically that any property requirement is violative of his rights under the Fourteenth Amend-

ment of the United States Constitution in that it denies him equal protection of the law and due process of law.

Any law which discriminates between citizens must be judged according to the **right involved** and the **basis for the discrimination**.

If the **right involved** is a **fundamental right**, then the government must show that there is a "compelling state interest" for the discrimination. It does not appear that there is a compelling state interest in requiring Airport Commissioners to be property owners. Thus, if the right to hold appointed office is a **fundamental right,** the property ownership requirement is unconstitutional as a denial of equal protection of the law in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

United States Supreme Court cases say that among the fundamental rights are marriage [*Loving v. Virginia*, 88 U.S. 1], procreation [*Skinner v. Oklahoma*, 316 U.S. 535], and contraception [*Eisenstadlt v. Baird*, 405 U.S. 428]. The right to vote is a fundamental right [*Dunn v. Blumstein*, 405 U.S. 330]. The right to have one's vote weighed equally with others is a fundamental right [*Reynolds v. Sims*, 377 U.S. 533]. The right to travel interstate is fundamental [*Shapiro v. Thompson*, 394 U.S. 619] as are First Amendment rights [*Police Department of City of Chicago v. Mosley*, 408 U.S. 92].

If there is no authority for a fundamental right, it must be seen whether the right is based on basic values that underlie our society.

The Court does not believe that the right to hold an appointive office is a fundamental right. If the right involved is **not** a fundamental right, then plaintiff must prove that there is **no rational basis** for the distinction between citizens drawn by the statute. It appears that there is a rational basis for

requiring Airport Commissioners to be property owners. This insures that the persons on the Airport Commission are affected by their decisions and concerned and connected with the area they represent.

In support of his contention that the property requirement is unconstitutional, plaintiff has cited the cases of *Kramer v. Union Free School District No. 15*, 394, U.S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 Supreme Court 1990 (1970). These cases involved the denial of the franchise to otherwise qualified electors, simply because they did not own real property. The Court is of the opinion that these cases are distinguishable from the instant case because the right to vote is a fundamental right, whereas, the Court does not believe that the right to hold an appointive office is a fundamental right. It is, therefore, the Court's opinion that the property ownership qualification of Act 151 of 1969 is not unconstitutional.

Finally it must be determined whether or not plaintiff is entitled to rescind the agreement he made to step down as Executive Director and Secretary of the Greater Baton Rouge Airport District in exchange for an appointment to the Greater Baton Rouge Airport Commission. The Court is of the opinion that plaintiff is not so entitled.

Plaintiff contends that he entered into a contract of exchange between himself and the Airport Authority whereby he gave up one job in return for an appointment to the Airport Commission. While it is apparent to the Court that there were a great deal of political negotiations involved, the Court does not believe that the Authority acting as a governmental body ever bound itself to such an exchange agreement. Plaintiff's testimony indicates that his agreement was made by long distance telephone call with Councilman Currier. The letter of resignation submitted by Mr. Chappelle (D-4) con-

tained no reservations, qualifications, or limitations on his resignation. The letter addressed to Mr. Joseph F. Keogh, the City-Parish Attorney, reads as follows:

"I hereby submit my resignation as Executive Director and Secretary of the Greater Baton Rouge Airport District."

The Court further notes that the minutes of the Greater Baton Rouge Airport Authority (D-1) merely accept plaintiff's resignation and at the same time appoint him to the position on the Airport Commission. No correlation, limitation, or other connection is drawn between the two acts so as to evidence an intent to enter into a contract of exchange in relation to the two positions.

The Court refuses to believe that the City Council was guilty of any fraud or artifice because they knew that plaintiff lacked the necessary qualifications for appointment to the Commission. There was not one scintilla of evidence, other than the testimony of the plaintiff, in regard to any "deal" regarding the job swap. It is incumbent upon the plaintiff to prove the facts underlying any such arrangement. On the basis of the evidence presented on the trial of the case, the Court is of the opinion that plaintiff has fallen far short of showing that the City Council entered into any contract of exchange with him. The Court is of the opinion that the negotiations between the parties were of a political nature and not of a contractual nature. The Court is, therefore, of the opinion that the negotiations between the parties did not amount to a contract of exchange as contemplated in LSA-C.C. 2660, et seq. Accordingly, the Court does not believe that under the mandate of LSA-C.C. 2663 plaintiff is entitled to be returned to his position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Defendants have requested their attorney's fees in this matter. This point was not argued and no evidence was presented which showed a statutory or contractual basis on the

claim for attorney's fees. Therefore, the Court is of the opinion that the claim for attorney's fees is without merit.

For the above and foregoing reasons, the Court is of the opinion that defendants are entitled to judgment in their favor and against plaintiff, E. C. Chappelle, Jr., dismissing plaintiff's suit. Defendants' request for attorney's fees is denied. All costs of this proceeding are to be borne by plaintiff.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 23rd day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

JUDGMENT

This cause came on the 22nd day of July, 1975, for hearing pursuant to the previous orders of this court. Present:

Herschel C. Adcock, attorney for E. C. Chappelle, Jr., and Edward J. Fetzer, attorney for the defendants.

After hearing the pleadings, testimony and oral arguments,

IT IS ORDERED that judgment is rendered herein in favor of defendants, Woodrow W. Dumas; William J. Guste, Jr.; and William S. Day, Jr., Jewel J. Newman, Earl Harrison, George R. Dabbs, Michael G. Roubique, Edgar L. Watts, Jr., Stanley J. Gross, Johnny H. Dykes, William T. Winfield, Joseph A. Delpit, Tommy Neck, and Dr. C. P. Currier in their capacity as members of The Greater Baton Rouge Airport District, The Greater Baton Rouge Airport Authority and The City Council, dismissing plaintiff's suit at his cost.

JUDGMENT FURTHER RENDERED in favor of plaintiff and against defendants denying defendants' request for attorney's fees.

JUDGMENT RENDERED on the 23rd day of July, 1975.

JUDGMENT READ AND SIGNED in Open Court on this 28th day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

APPENDIX D

Judgment, Opinion and Refusal of Application for Rehearing of the Court of Appeal, First Circuit, State of Louisiana

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STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT
NUMBER 10,621

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HON. STEVE A. ALFORD, JUDGE, PRESIDING

Before Sartain, Edwards, and Bennett
Edwards, J.

Plaintiff-appellant sued to enjoin defendant-appellees from removing him from his position as member of the Greater Baton Rouge Airport Commission. When the preliminary injunction was denied, appellant was removed from the Commission. Appellant amended his petition and sought a declaratory judgment relative to his qualifications to hold the position on the Commission and alternatively asked to be reinstated to his former position of Executive Director and Secre-

tary of the Greater Baton Rouge Airport District (District). The trial court rendered judgment in favor of defendants and against plaintiff, dismissing his suit. From this ruling plaintiff now appeals.

There are three issues before us:

1. Did appellant fulfill the requirement of Act 151 of 1969 that appointees to the Commission must own "property assessed in East Baton Rouge Parish?"

2. If not, is that requirement violative of appellant's rights under the Fourteenth Amendment to the United States Constitution guaranteeing equal protection of the laws?

3. Was a contract of exchange effectuated between appellant and appellees whereby appellant was to give up his position as Director of the District in return for his appointment to the Commission, and did his removal from the Commission constitute a breach thereof warranting in law the relief of reinstatement to his former position?

FACTS

The facts as found by the trial court and as reflected by the record are not in dispute. Appellant served as Director of the District for a period of some five years until his resignation on May 13, 1974. Prior to this date, appellant had experienced increasing unspecified harassment in his capacity as Director. As a compromise gesture, he then proposed to Dr. C. O. Currier, member of the City-Parish Council, the appointing authority for the Commission, that he, appellant, would resign his position as Director in exchange for his being appointed to the Commission. On May 13, 1974 the appellant resigned as Director and was appointed to the Commission. Subsequently, the Parish Clerk declared appellant's position on the Commission vacant. The basis for this action

was a legal opinion of the Parish Attorney stating that appellant was not qualified to serve as a member of the Commission because at the time of his appointment he owned no property assessed in East Baton Rouge Parish. This suit followed.

(1) "Property assessed" under Act 151 of 1969

Act 151 of 1969 requires that an appointee to the Commission own "property assessed in East Baton Rouge Parish." At the trial, appellant introduced evidence that he had paid sales tax on an automobile that he purchased prior to his appointment in 1974. He also introduced evidence of a purchase of a piece of immovable property located in East Baton Rouge Parish on February 7, 1975.

Initially, we agree with the trial court's determination that the purchase on February 7, 1975, several months after the appointment, is irrelevant to the determination of appellant's qualifications for the appointment. Qualifications for appointive office are determined at the time of the appointment.

The question remains whether the ownership of and the payment of sales tax on the purchase of the automobile satisfy the requirement of "property assessed."

The appellant contended and the trial court agreed that the term "property" should include movables as well as immovables. Where, as here, there are no limitations placed on the term within the particular statute in question, both the legislation and jurisprudence support such a broad, unrestricted interpretation. *See La. Civ. Code* art. 14; *La. Code Civ. P.* art. 5251 (13); *Kansas City Life Ins. Co. v. Hammett*, 177 La. 930, 149 So. 525 (1933); 73 C.J.S. *Property* Section 1.

The further qualification contained in the Act is that the property be "assessed in East Baton Rouge Parish."

Appellant argues that (1) property does not have to appear on the assessment rolls to be assessed and (2) the payment of a sales tax constitutes an assessment of that property. Pretermitting for the moment appellant's initial contention, we cannot accept the argument that the payment of sales tax constitutes an assessment. Black's Law Dictionary 150 (rev. 4th ed. 1968) makes clear the distinction between the two. "Assessment" is:

> "The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. . . . It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. . .
>
> " 'Assessment' and 'levy' are frequently used interchangeably. . . Though properly speaking it does not include the levy of taxes. . . Assessment is also popularly used as synonym for taxation in general, the authorative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue. . .
>
> "An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property; whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits: to repay which the assessment is levied. . ."

So defined, the payment of a sales tax does not constitute an assessment.

Although, as appellant contends, the appearance of property on the assessment rolls may not be the exclusive proof of assessment, such listing is indeed competent evidence, and such that the legislature might choose to rely upon for determining assessment and ownership of property assessed.

(2) Constitutionality of Act 151 of 1969

Does the requirement of Act 151 of 1969 that appointees own property assessed in East Baton Rouge Parish violate appellant's right to equal protection of the law?

When a legislative classification is challenged, as here, on Fourteenth Amendment equal protection grounds, one of two tests may be applied to determine the validity of the statute. The "compelling state interest" test is applied when there is involved a "fundamental" right, such as the right to vote or to marry whomever one chooses, or when there is employed a "suspect" criterion, such as race or sex. In all other cases traditional equal protection standards apply. Appellant cites, and this court has found, no cases holding that the right to be considered for appointive public office is a fundamental right. Therefore, we will test the classification herein by traditional standards of equal protection.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961), the Court summarized the rule:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly

> irrelevant to the achievement of the State's objective. State Legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."
>
> 81 S. Ct. at 1105

In enacting Act 151 of 1969, the legislature sought to insure that the members of the commission would have a substantial interest in performing their duties effectively and conscientiously. The legislature could have concluded reasonably that property owners of East Baton Rouge Parish would have that interest. To effectuate this objective, the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish." The fact that the determination of property ownership could have been made otherwise in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen.

La. R.S. 47:1956-1957 require every owner of property, movable and immovable, to submit to the Parish Assessor a list of that property. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for the purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational.

Appellant contends that the payment of sales tax on the purchase of an automobile should suffice to qualify him under the Act. There is no doubt that the payment of such a tax is evidence of ownership of property, at least at the time of purchase. However, it does not constitute an assessment of his property, as indicated *supra*. At issue is the rationality

vel non of the legislative scheme employed. The legislature chose to make assessment, rather than payment of sales tax, the criterion of ownership. We are not concerned with the relative merits of the possible schemes; the one chosen is rationally related to a valid legislative objective and is therefore constitutional.

Appellant cites *Turner v. Fouche*, 396 U.S. 346, 90 S. Ct. 532 (1970) as mandating that we hold Act 151 of 1969 unconstitutional. In *Turner*, the Court found a Georgia statutory requirement of ownership of immovable property for appointment to a county board of education to deny equal protection of the laws under the traditional test. However, considering our increasing population and diminishing availability of land, there are many good citizens who own no immovable property but who do own movable property in varying amounts. Therefore, a classification like that of the Georgia statute which eliminates those who own no immovable or real property from consideration for public office is far more invidious than one like ours which bars only those who own no property at all. With this in mind, we note the Court's closing remarks in *Turner, supra.*:

> **Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny**, we cannot say, on the record before us, that the present free-holder requirement for membership on the county board of education amounts to anything more than invidious discrimination. (emphasis added).
>
> 90 S. Ct. at 542

We therefore hold the legislative scheme employed under Act 151 of 1969 *prima facie* constitutional. There has been no allegation that the assessment practices **as applied** in this case are unconstitutional, nor has there been any evidence adduced on this issue. We cannot take judicial notice of the assessment practices of the assessor of East Baton Rouge Parish, *La.* R. S. 15:422. We therefore do not pass on the issue

of the constitutionality of the **application** of the legislative scheme.

3. **Exchange**

Appellant testified at the trial concerning his proposal to Dr. Currier and of the understanding that he, appellant, had that an agreement was made to "exchange" his position as Director for a position on the Commission. Because he was later ousted from the Commission, appellant now invokes *La. Civ. Code* art. 2663[1] for relief in the form of reinstatement as Director.

Appellant is not in a position to avail himself of the provisions of this article.

La. Civ. Code art. 2660 defines exchange as a contract whereby the parties give to one another one thing for another. *La. Civ. Code* arts. 2660-2667 (Of Exchange) are found in Book III of the Civil Code—"Of The Different Modes Of Acquiring The Ownership Of Things." The last, Article 2667, states that, except for the differences found in the preceding seven articles, all the provisions relative to sales apply to exchange. Chapter 3 of Title VII (Of Sale) is titled "Of Things Which May Be Sold." "Effects of commerce" (Article 2448); "the rights, titles and interests to an inheritance" (Article 2449); "an uncertain hope . . . as the fisher sells a haul of his net before he throws it" (Article 2451)—all are illustrative of the various things which may be sold or exchanged. However, implicit in every sale or exchange is **ownership**, acquired and divested. A public official does not own the public office he holds; he cannot barter or sell his office as an effect of commerce, an inheritance right, an uncertain hope, or as anything else. He is elected or appointed to a position of fidelity to the public trust.

[1] The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.

There is no merit in, and this court will not consider, applying the codal provisions of our private law of exchange to a political controversy involving the attempted barter of public office.

The decision of the trial court is affirmed at appellant's cost.

AFFIRMED.

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

No. 10,621

PARISH OF EAST BATON ROUGE

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

On application for rehearing.

Rehearing refused.

Baton Rouge, Louisiana, April 12, 1976.

s/ C. Lenton Sartain

s/ Wallace A. Edwards
Judges

APPENDIX E

Refusal of the Supreme Court of Louisiana to Grant Writ of Certiorari or Writ of Review, Memorandum Decision

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SUPREME COURT OF LOUISIANA
New Orleans, 70112
June 9, 1976

No. 58,025

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

In re: E. C. Chappelle, Jr., applying for Certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

Writ denied; no merit in the assignment of errors.

s/ WFM

s/ JWS

s/ FWS

s/ AT, Jr.

DIXON, J., is of the opinion the writ should be granted.

CALOGERO, J., is of the opinion the writ should be granted. Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970) mandates relief for applicant.